

## Table of Contents

	Page
Opinion Below . . . . .	1
Questions Presented . . . . .	4
Statement of the Case . . . . .	4
The Questions Presented are Substantial . . . . .	7
Act Patently Unconstitutional . . . . .	12
The Acts and Deeds of State Officials Deprive Appellant of His Constitutional Liberties . . . . .	22
Proof of Service . . . . .	26
Appendix A . . . . .	A-1-A-14
Appendix B . . . . .	B-1-B-18

## Table of Citations

### CASES

<i>Basista v. Weir</i> , 340 F.2d 74 . . . . .	3,24
<i>Beauharnais v. People of the State of Illinois</i> , 343 U.S. 250, 72 S.Ct. 725 . . . . .	2,24
<i>Birnbaum v. Trussell</i> , 371 F.2d 672 . . . . .	3,24
<i>Birnbaum v. Trussell</i> , 371 F.2d 692 . . . . .	3,24
<i>Brazier v. Cherry</i> , 293 F.2d 400 . . . . .	3,24
<i>Brown v. Brown</i> , 368 F.2d 992 . . . . .	3,24
<i>Cancino v. Sanchez</i> , 379 F.2d 808 . . . . .	3,24
<i>Cohen v. Norris</i> , 300 F.2d 3,24 . . . . .	3,24
<i>Coleman v. Johnson</i> , 247 F.2d 273 . . . . .	3,24

## Table of Contents

	Page
<i>Connerly v. General Construction Co.</i> (1926), 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322	12
<i>Cooper, et al. v. Aaron, et al.</i> , 358 U.S. 1, 78 S.Ct. 1401	2,3,24
<i>DeWitt v. Pail</i> , 366 F.2d 682	3,24
<i>Drombowski v. Pfister</i> , 380 U.S. 479, 14 L.Ed.2d. 22, 85 S.Ct. 1116	A-13
<i>Egan v. City of Anvora</i> , 291 F.2d 706, 708 (7 Cir. 1961)	3,24
<i>Elkins v. United States</i> , 364 U.S. 206 (1960)	3
<i>Escobedo v. Illinois</i> , 378 U.S. 478 (1964)	3
<i>Ex Parte, Virginia</i> , 100 U.S. 339, 347	22
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963)	3
<i>Greene v. McElroy</i> (1959), 360 U.S. 474, 79 S.Ct. 1400	2,20,22
<i>Hague v. CIO</i> , 307 U.S. 496, 59 S.Ct. 954	3,22,24
<i>Hannah v. Larche</i> (1960), 363 U.S. 420, 80 S.Ct. 1502	16,17,18,21,A-1,A-6,A-7,A-8,A-10
<i>Hoffman v. Halden</i> , 268 F.2d 280	3,24
<i>Hughes v. Noble</i> , 395 F.2d 495	3,24
<i>Jenks v. Henys</i> , 378 F.2d 335	3,24
<i>Jennings v. Nester</i> , 217 F.2d 153, 154 (7 Cir. 1954)	3,24
<i>Joint Anti-Fascist Refugee Committee v. McGrath</i> , 341 U.S. 123, 71 S.Ct. 624	2,19,20,21,22

# Table of Contents

iii

## Page

<i>Lewis v. Brautigam</i> , 227 F.2d 124, 55 A.L.R.D.2d 505 (5 Cir. 1955) . . . . .	3,24
<i>Malloy v. Hogan</i> , 378 U.S. 1 (1964) . . . . .	3
<i>Mapp v. Ohio</i> , 378 U.S. 1 (1961) . . . . .	3
<i>Martone v. Morgan</i> , 207 S.2d 770 . . . . .	19,A-1
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966) . . . . .	3
<i>Monroe v. Pape</i> , 81 S.Ct. 473 . . . . .	3,24
<i>Morgan v. Labiak</i> , 368 F.2d 338 . . . . .	3,24
<i>Morgan v. United States</i> , 304 U.S. 1, 58 S.Ct. 773 . . . . .	2,22
<i>N.A.A.C.P. v. Button, et al.</i> , 371 U.S. 415, 83 S.Ct. 328 . . . . .	2,25
<i>Nesmith v. Alford</i> , 318 F.2d 110 . . . . .	3,24
<i>O'Connell v. United States</i> , 140 F.2d 201 (2d Cir. 1930) . . . . .	3
<i>Pyle v. Kansas</i> , 317 U.S. 213, 63 S.Ct. 177 . . . . .	3,24
<i>Rivers v. Royster</i> , 360 F.2d 592 . . . . .	3,24
<i>Robichaud v. Ronan</i> , 351 F.2d 533 . . . . .	22
<i>Rogers v. United States</i> , 346 U.S. 367 (51) . . . . .	3
<i>Saunders v. Shaw</i> , 244 U.S. 317, 37 S.Ct. 638 . . . . .	2
<i>Scolnick v. Winston</i> , 219 F.Supp. 836, 842 (S.D. N.Y. 1963) . . . . .	3,24
<i>Shushan v. United States</i> , 117 F.2d 110 (1941) . . . . .	3
<i>Smith v. Hampton Training School for Nurses</i> , 360 F.2d 577 . . . . .	3,24

	Page
<i>State of Missouri, ex rel., Gaines v. Canada,</i> <i>et al.</i> , 305 U.S. 337, 59 S.Ct. 232 . . . . .	2,3,24
<i>Stefanelli v. Minard</i> , 342 U.S. 117, 96 L.Ed. 138, 72 S.Ct. 118 . . . . .	A-12
<i>Turner v. Goolsby</i> , 255 F.Supp. 724 . . . . .	A-11
<i>United States v. Classic</i> , 313 U.S. 299, 61 S.Ct. 1031 . . . . .	3,24
<i>United States v. Morton Salt</i> , 338 U.S. 632 (1950) . . . .	2
<i>United States, ex rel., Potts v. Rabb</i> , 141 F.2d 45 . . . . .	3,24
<i>Valle v. Stingel</i> , 176 F.2d 697 . . . . .	3,24

## STATUTES AND RULES

### Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967

(LSA-R.S. 23.880.1-880.18) . . . . .	2,7,12,A-1,A-2,A-4,A-14
R.S. 23.880.1 . . . . .	7,8,A-4
R.S. 23.880.2 . . . . .	8
R.S. 23.880.4 . . . . .	8
R.S. 23.880.5 . . . . .	7,A-5
R.S. 23.880.6(a) . . . . .	10,A-5
R.S. 23.880.6(b) . . . . .	9
R.S. 23.880.6(c) . . . . .	8
R.S. 23.880.6(d) . . . . .	8
R.S. 23.880.7(a) . . . . .	10,A-5
R.S. 23.880.7(b) . . . . .	5,10,14
R.S. 23.880.8 . . . . .	10
R.S. 23.880.9 . . . . .	11
R.S. 23.880.10(b) . . . . .	11
R.S. 23.880.12(a) . . . . .	12
R.S. 23.880.16 . . . . .	11

## Table of Contents

### Page

Rule 23 of the Federal Rules of Civil Procedure . . . A-14

Rules 13(2) and 15 of the United States Supreme  
Court . . . . . 1

Statute 634, 42 U.S.C. 1975-1975(e), 42 U.S.C.A.  
1975-1975(e) . . . . . A-6

Title 28, U.S.C. 1253 and 2101(c) . . . . . 2

Title 28, U.S.C.A. 2281 and 2284 . . . . . A-1

Title 42, U.S.C.A. 1981, 1983 and 1988 . . . . . A-11

### MISCELLANEOUS

First Amendment to the  
United States Constitution . . . . . 4,24

Fourteenth Amendment to the  
United States Constitution . . . . . 22,23,24,A-3

West's Louisiana Revised Statutes Annotated,  
Volume 16, page 9 of the 1967 Cumulative  
Annual Pocket Part . . . . . 2

STATE

IN

COURT OF

RECORDS

NO

RE

WR

TR

DR

CR

SR

BR

FR

GR

HR

IR

OR

UR

VR

WR

TR

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1968

NO.

RODERICK JENKINS,

Appellant

versus

JOHN JULIEN McKEITHEN, ET AL.,

Appellees

On Appeal from the United States District Court,  
Eastern District of Louisiana

STATEMENT AS TO JURISDICTION

-----

The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, files this statement of the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the United States District Court, in dismissing appellant's petition, and should exercise such jurisdiction in this case.

*OPINION BELOW*

The reasons for judgment were assigned on June 26, 1968, and a formal judgment was signed on July 2, 1968. A copy of the opinion is annexed hereto as Appendix A, infra, pages A-1-A-14. This decision has not been reported.

## JURISDICTION

This appeal is from a judgment entered by a three-judge United States District Court, dismissing appellant's lawsuit which prayed for the convening of a statutory three-judge district court and for interlocutory and permanent injunctions against the enforcement of Act. No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. Because this state statute is lengthy its text is reproduced and attached hereto as Appendix B, *infra*, pages B-1-B-18. It is reported in West's Louisiana Revised Statutes Annotated, Volume 16, page 9 of the 1967 Cumulative Annual Pocket Part, officially cited as R.S. 23:880.1-880.18. Appellant's petition alleges that the statute as a matter of law and as administered denies him privileges and immunities as a citizen of the United States, due process and equal protection of the laws, guaranteed by the Fourteenth Amendment to the United States Constitution.

This court has jurisdiction on direct appeal to review said judgment under Title 28, United States Code, Section 1253, and Section 2101(c), and the following decisions sustain that jurisdiction: *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S.Ct. 624; *Greene v. McElroy* (1959), 360 U.S. 474, 79 S.Ct. 1400; *Morgan v. United States*, 304 U.S. 1, 58 S.Ct. 773; *Cooper, et al. v. Aaron, et al.*, 358 U.S. 1, 78 S.Ct. 1401; *State of Missouri, ex rel. Gaines v. Canada, et al.*, 305 U.S. 337, 59 S.Ct. 232; *Beauharnais v. People of the State of Illinois*, 343 U.S. 250, 72 S.Ct. 725; *N.A.A.C.P. v. Button, et al.*, 371 U.S. 415, 83 S.Ct. 328; *Saunders v. Shaw*, 244 U.S. 317, 37 S.Ct. 638; *United States v. Morton Salt*, 338 U.S. 632 (1950);

*Elkins v. United States*, 364 U.S. 206 (1960); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Mapp v. Ohio*, 378 U.S. 1 (1961); *Cf. Rogers v. United States*, 346 U.S. 367 (1951); *Malloy v. Hogan*, 378 U.S. 1 (1964); *O'Connell v. United States*, 140 F.2d 201 (2d Cir. 1930); *Shushan v. United States*, 117 F.2d 110 (1941); *Cooper, et al. v. Aaron, et al.* (1958), 358 U.S. 1, 78 S.Ct. 1401; *State of Missouri, ex rel., Gaines v. Canada, et al.* (1938), 305 U.S. 337, 59 S.Ct. 232; *Monroe v. Pape*, 81 S.Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177; *Hague v. CIO*, 307 U.S. 496, 59 S.Ct. 954; *Birnbaum v. Trussell*, 371 F.2d 672; *Basista v. Weir*, 340 F.2d 74; *Nesmith v. Alford*, 318 F.2d 110; *Cohen v. Norris*, 300 F.2d 24; *Hughes v. Noble*, 395 F.2d 495; *Brazier v. Cherry*, 293 F.2d 400; *Coleman v. Johnson*, 247 F.2d 273; *United States, ex rel., Potts v. Rabb*, 141 F.2d 45; *Valle v. Stingel*, 176 F.2d 697; *Cancino v. Sanchez*, 379 F.2d 808; *Jenks v. Henys*, 378 F.2d 335; *Brown v. Brown*, 368 F.2d 992; *Morgan v. Labiak*, 368 F.2d 338; *DeWitt v. Pail*, 366 F.2d 682; *Smith v. Hampton Training School for Nurses*, 360 F.2d 577; *Rivers v. Royster*, 360 F.2d 592; *Birnbaum v. Trussell*, 371 F.2d 692; *Hoffman v. Halden*, 268 F.2d 280; *Lewis v. Brautigam*, 227 F.2d 124, 55 A.L.R.2d 505 (5 Cir. 1955); *Scolnick v. Winston*, 219 F.Supp. 836, 842 (S.D. N.Y. 1963); *Egan v. City of Aurora*, 291 F.2d 706, 708 (7 Cir. 1961); *Jennings v. Nester*, 217 F.2d 153, 154 (7 Cir. 1954).

## ***QUESTIONS PRESENTED***

1. Is a state statute valid, which by its terms creates an executive trial agency, whose sole function is to conduct public hearings for the purpose of making "findings" (a) that state or federal crimes have been committed, and (b) that named individuals are guilty of the commission of such crimes; which "findings" must be "publicized," as part of a criminal process, where persons suspected or called as witnesses are denied (1) the right to examine or cross-examine any witness who may testify for or against him, (2) the right to the effective assistance of counsel (3) the right of confrontation, (4) the right to compulsory process for the attendance of witnesses, (5) the right to effective and meaningful rules of evidence, (6) the right to meaningful and definable standards of guilt or innocence and (7) the right of appeal?

2. Do the acts and deeds of state officials in willfully applying the provisions of said state statute in a discriminatory manner against appellant and members of a labor union, for the sole purpose of destroying said labor union and discrediting its members, deprive appellant and those similarly situated of constitutional due process and equal protection of laws guaranteed by the Fourteenth Amendment to the United States Constitution, and of freedom of speech and association guaranteed by the First Amendment of the United States Constitution?

## ***STATEMENT OF THE CASE***

The legal issues on this appeal are framed by the

pleadings of appellant's lawsuit. In his lawsuit appellant charges that the state statute in controversy, as a matter of law and as administered, deprives him of privileges and immunities as a citizen of the United States, of due process and equal protection of laws, guaranteed by the Fourteenth Amendment to the United States Constitution. The burden of his complaint is that the state statute creates an executive trial agency, known as the Labor-Management Commission of Inquiry. Its sole function is to conduct public hearings in the field of labor-management relations for the purpose of making "findings" concerning the existence of state or federal crimes and to identify the individuals who are guilty of the commission of such crimes. Under the terms of said statute these "findings" of guilt of law violations must be publicized. After this state agency has found named persons guilty of having committed crimes, and after such "findings" have been duly "publicized," it then becomes the mandatory duty of said state agency to "report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses." In addition, when directed to do so by the Commission, "the Chairman shall file appropriate charges with the state and federal authorities having jurisdiction." Section 880.7(b). Thus the public hearing, the findings of guilt, and the publicizing of these findings are part of the criminal process.

Appellant further charges in his petition that a person subpoenaed before this trial agency as a potential accused or as a witness is denied the right to the effective assistance of counsel, to examine and cross-examine the witnesses

against him, to compulsory process for the attendance of witnesses in his behalf, to the benefit of effective and meaningful rules of evidence and to the benefit of meaningful and definable standards of guilt or innocence. Thus he is denied the rudiments of constitutional due process and equal protection of laws.

Appellant further charges in his lawsuit that the named defendants, their agents, representatives and employees and those acting in concert with them, in connection with the administration of this State Act have singled out appellant and members of Teamsters Local Union No. 5 as a special class of persons for repressive and willful and punitive action, solely because they are members of said labor union for the purpose of destroying said labor union. The complaint further establishes that the conspiracy alleged includes actions of state officials of willfully scandalizing members of said labor union, of knowingly filing false criminal charges against members of said labor union and of exacting excessive bail bonds in connection with such false charges, of intimidating other public officials into carrying out such tyrannical aims and of otherwise bringing to bear the entire police power of the state in furtherance of the conspiracy. By supplemental complaint it is alleged, inter alia, that officials of this state agency have singled out certain officials of said labor union for murder and this charge is supported by an affidavit of a former undercover agent of said state agency.

Based upon these substantial averments appellant prayed for injunctive relief. His application for a hearing as to his request for interlocutory injunction was refused. Instead,

the three-judge district court conducted a hearing only as to defendants' motion to dismiss. After oral argument of counsel the statutory three-judge district court maintained defendants' motion and summarily dismissed appellant's lawsuit.

On July 2, 1968, appellant gave notice of his appeal to this court.

### *THE QUESTIONS PRESENTED ARE SUBSTANTIAL*

The offensive nature and overreaching quality<sup>2</sup> of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967 (R.S. 23:880.1 — 880.18) can be accurately appraised only if the nature and function of the Commission of Inquiry which it creates are subjected to close scrutiny. The structure of its power is a good beginning point.

The Commission of Inquiry is an executive trial agency. Its powers of inquiry are to be exercised only on an ad hoc basis, Section 880.1, and then only when, in the opinion of the Governor alone, that power should be exercised. Section 880.5. Thus, the reins of control are vested exclusively in the already powerful hands of the Governor of the State of Louisiana and the standards of judgment by which he is to be guided in unleashing the consummate power of depredation inherent in the Commission are so vague and indefinite as to offer no legally definable guidelines whatever, with the result that the Governor thereby is invested with arbitrary and capricious powers to injure and damage

or praise and compliment accordingly as his whim may induce him to act.

The Commission of Inquiry consists of nine (9) members appointed by the Governor. Section 880.1. Moreover, the Governor appoints the chairman and vice-chairman. Section 880.2. A majority of five (5) controls. Section 880.4.

All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the State and of the political subdivisions of the State are mobilized and impressed into cooperative service with the Commission to the end of effectuating its function and duties by the provisions of 880.6(d). Moreover, on the simple request of the Governor the entire investigatory forces of the Commission of Inquiry are assignable to the State Police and during that assignment the assignees "have all the power and authority of other members of the State Police." Section 880.6(c). Thus, all the power and might of the State of Louisiana are harnessed to the executive juggernaut.

This great arsenal of power is concentrated in a narrow functional chamber aimed at conducting public trials concerning criminal law violations. Significantly, the Commission of Inquiry does not conduct inquiry which is related to or in furtherance of a legitimate task of the Legislature. In fact, it does not report to the Legislature. It is not a fact-finding agency of the Legislature or even of the Executive, such as permissibly may be created for the purpose of gathering facts to be used by the Legislature or the Executive in formulating remedial legislation. To the

contrary, it is prohibited from doing this forasmuch as it is powerless to "hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problems or disputes." Section 880.6(b)<sup>1</sup>. It is an executive trial agency which receives evidence to ascertain the existence of "facts surrounding or pertinent to \*\*\*\* any actual or probable violations of the criminal laws of this State or of the United States which

---

<sup>1</sup> B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of any labor problem or dispute but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matter which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lock-out or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters or (4) any alleged acts of violence or threats of violence or so-called "mass picketing," or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute," as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

relate to, arise out of or are connected with problems or disputes in the field of labor-management relations." Section 880.6(a).

After conducting its investigations and hearings, it is the mandatory duty of this Commission to make findings of fact limited to two (2) objectives: (a) the violations of any criminal law or laws of the United States or of the State of Louisiana, and (b) the guilt or innocence of specific individuals as to such criminal law violations. Section 880.7(a). Not only is it the mandatory duty of the Commission to make such "findings" but the Commission must "publicize" these "findings." Additionally, no such "findings" can be made and "publicized" unless it is preceded by a "public hearing." Section 880.7(a). Thus, the legislative intent to "publicly" condemn is unmistakably clear. After the Commission has made public "findings" that certain citizens are criminals it then becomes its mandatory duty to "report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses." In addition, when directed to do so by the Commission, "the chairman shall file appropriate charges with the state and federal authorities having jurisdiction. Section 880.7(b).

This Commission is empowered to adopt rules and regulations controlling its function, to employ necessary personnel, to administer oaths, to issue subpoenas for the personal appearance of witnesses and for the production of books and to take depositions anywhere in the United States. Section 880.8. Subpoenas may be served by anyone

designated by the Commission and the Commission may apply to the courts to compel attendance of witnesses and it is empowered to compel obedience to its will by instituting contempt proceedings. Section 880.9.

Arrayed against such an ominous police structure is your appellant and persons similarly situated. One called as a witness may be a potential suspect. Nevertheless, neither prosecuting witness nor victim has a right to examine or cross-examine any witness who may testify for or against him.<sup>2</sup> There is no right to the effective assistance of counsel,<sup>3</sup> no right of confrontation, no right to compulsory process for the attendance of witnesses. There are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and no right of appeal.

The Commission may receive any type evidence, hearsay or otherwise. Furthermore, no matter how willful, how malicious, how irresponsible the conduct of the employees, agents, representatives and officials of the Commission may be, and no matter how grave the resultant injury, by virtue of the provisions of Section 880.16 the doors of all the

---

<sup>2</sup> Section 880.10 (b) expressly provides that:

*"In no event shall counsel for any witness have any right to examine or cross-examine any other witness \*\*\*."*

<sup>3</sup> While Section 880.10(b) grants to a witness the right to be accompanied by counsel, who may advise him, such right to counsel is made wholly ineffective, because counsel's act of advising the witness of his rights is "subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing." In fact, the insistence of counsel on his advocacy itself may be construed as disorderly behavior toward the commission and thus subject counsel to a contempt citation, pursuant to the provisions of 880.0(6) (2).

courts of Louisiana are shut against its victims for redress of grievances, including injury to person and reputation. Such is the nature and function of the Commission of Inquiry created by Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967.

### **ACT PATENTLY UNCONSTITUTIONAL**

The validity of the provision of any statute must be tested not by its labels or title but on the basis of the terms employed. *Connerly v. General Construction Co.*, (1926) 269 U.S. 385, 46 S.Ct. 126, 70 L. Ed. 322. The terms employed by the Act under consideration unmistakably characterize and empower the Commission of Inquiry as an accusatory body charged with the exclusive responsibility of finding the existence of criminal law violations and of naming individuals who are guilty of these criminal violations. That is its *raison d'être*. It can function only under the glare of public view. While it has power to hold executive hearings, evidence adduced during such hearings cannot form the basis of its "findings." Such evidence must be heard anew in open hearings before it can be considered by the Commission in making its "findings." Section 880.12(a). In effect, therefore, the Commission's sole function is to conduct what is tantamount to a preliminary hearing as used in the federal criminal law system or a preliminary examination as used in the state criminal law system. Moreover, while the incriminating and defamatory evidence is being heard, television cameras are grinding away and representatives of the news media are ever present collecting the evidence, sensationalizing it and subsequently disseminating it throughout the State and

even to the far reaches of the nation with the result that the entire population of the State sits as a jury to determine the guilt or innocence of the accused. In such a context the guilty verdict of the Commission is almost anti-climactic. Nevertheless, the accused stands formally adjudged a criminal. He is thereby forever stigmatized with all of the horrendous consequences of that stigma.

His prior good reputation in the community is reduced to rubbish. He is now a pariah, to be shunned. He is an object of derision. His wife, his children, his parents and his relatives must share his shame. A bearing of self-respect and personal dignity now is publicly judged as morbid arrogance or personal depravity. The stigma is like a communicable disease. Those who associate with him will contract the stigma. He is no longer a suitable candidate for employment. Prudent employers dare not risk contracting the disease which infects him. Thus, he suffers a great impairment of employment opportunities.

He has arrived at this disastrous station in life not because he is guilty of any wrongdoing. His abysmally servile and scandalous status exists because the State of Louisiana has deprived him of the opportunity to defend himself, to show the falsity of the dastardly charges made against him. He stands thus injured because in the face of the calumny which engulfs him he was not granted the right to confront his accusers, to have the effective assistance of counsel, to examine and cross-examine the witnesses against him, to bring witnesses to testify on his behalf. He was assassinated by weapons rejected as rank contrabands by all civilized societies; namely, opinion evi-

dence, innuendos, and hearsay testimony, because no effective and meaningful rules of evidence were applied to control the scope and nature of the evidence against him. His guilt was based on no meaningful and definable standards of guilt or innocence, and thus was the product of caprice and whim. In short, he is the victim of a classic Inquisition, an ugly recrudescence of the infamous days of Salem.

Standing thus denuded of personal dignity, defamed in good repute and denied of inalienable rights, he is without meaningful recourse or effective redress. Those officials who have plundered him are immune from civil liability by the very statute which authorized the slaughter. Those whose damaging hearsay evidence scandalized him enjoy the protective shield of quasi-privilege, because they were compelled by the duress of contempt punishment to respond to questions which expressly elicited such hearsay evidence. There is only one possible way out. The gods that he may prevail upon the Chairman of the Commission of Inquiry to administer the coup de grace, i.e., to file criminal charges against him as he is authorized to do by Section 880.7(b), so that finally the accused may have the opportunity to defend himself, to confront his accusers, to examine and cross-examine them, to bring witnesses to testify on his behalf, to cull the evidence against him by the employment of meaningful rules of evidence and to have his guilt or innocence determined by meaningful and definable standards. In this manner he stands the chance of being vindicated, of being exonerated, if only he can find a judge or jury who can still impartially evaluate the evidence against him. Should the Chairman of the Commission not be

possessed of the charity to administer the coup de grace, then he may still approach the state or federal district attorney on bended knees and beg to be criminally prosecuted so that thereby he may have the opportunity to be exonerated, to wash off the contamination of the stigma and erase his eroded image from the public mind, if that is still possible. In other words, he must invite the ignominy of a public trial, the further scourge of criminality and the financial burden of a defense for the opportunity to prove his innocence, to unring the bell of degradation sounded against him, to attempt to right a wrong that is constitutionally impermissible.

Thus by the plain terms of this statute the Commission of Inquiry of Louisiana conducts public trials concerning the existence of crimes and the guilt or innocence of persons in relation to those crimes. Furthermore, this public body determines the criminal liability of persons whom it may find are so involved. Moreover, such a determination or "finding" of criminal liability must be made public. Additionally, these findings of necessity contain a defamatory content. The only authority which this State agency lacks is the power to impose a fine or sentence the guilty person to a term of imprisonment. The lack of that power, however, does not make the adjudication or determination less binding. Nothing is more binding and everlastingly so nor more consummately injurious than a public condemnation formally pronounced after a public hearing by a State agency whose sole mission is to make such a determination.

The apocryphal claim that the state Commission is

nothing but an innocent fact-finding agency such as was involved in *Hannah v. Larche* (1960), 363 U.S. 420, 80 S.Ct. 1502, is supported neither by the terms of the state statute in controversy nor by the decision in HANNAH.

There is a marked difference between what is permitted in HANNAH and what is licensed in the instant case. For example, as the court observed in HANNAH, "potentially defamatory, degrading, or incriminating testimony shall be received in executive session, and that any person defamed, degraded, or incriminated by such testimony shall have an opportunity to appear voluntarily as a witness and to request the commission to subpoena additional witnesses; that testimony taken in executive session shall be released only upon the consent of the commission." (80 S.Ct. at p. 1509). The very contrary is true as to the function of the Commission of Inquiry. For example, the Commission deals only in incriminating testimony. Nothing heard in executive session may be considered by it in making its findings. Its findings are based entirely on incriminating evidence and its findings can relate to nothing but incriminating testimony. Of necessity its findings embrace a defamatory content. Further its incriminatory and defamatory findings must be publicized. The ultimate objective of the Commission function is to deliver these incriminatory findings to a state or federal authority charged with the responsibility of pursuing criminal prosecutions or to permit and direct its Chairman to institute such criminal prosecution. This is a far cry from the Commission function in HANNAH. In fact, in his concurring opinion Justice Frankfurter states that if the function of the Commission in HANNAH were equivalent to that of the Commission of Inquiry involved in

the instant case, the decision would be the reverse of what it was. Said Justice Frankfurter (80 S.Ct. at p. 1543):

"Were the Commission exercising an accusatory function, were its duty to find that named individuals were responsible for wrongful deprivation of voting rights and to advertise such finding or to serve as part of the process of criminal prosecution, the rigorous protections relevant to criminal prosecutions might well be the controlling starting point for assessing the protection which the Commission's procedure provides."

This is precisely what the State Commission of Inquiry is. It exercises (a) an accusatory function, (b) its duty is to find that named individuals are responsible for criminal violations, (c) it must advertise such finding, and (d) its finding serves as part of the process of criminal prosecution. Thus, all four conditions which Justice Frankfurter stated would demand the rigorous protections relevant to criminal prosecutions exist and concur in connection with the function of the Commission of Inquiry. This simply means that under the HANNAH decision the state statute is unconstitutional. As Justice Frankfurter observed the objectives and the function of the Commission on Civil Rights involved in HANNAH were completely opposite these involved in the instant case. Following his comments as quoted above Justice Frankfurter continued: (80 S.Ct. at p. 1543)

"The objectives of the Commission on Civil Rights, the purpose of its creation, and its true functioning

are quite otherwise. It is not charged with official judgment on individuals nor are its inquiries so directed. The purpose of its investigations is to develop facts upon which legislation may be based. As such, its investigations are directed to those concerns that are the normal impulse to legislation and the basis for it. To impose upon the Commission's investigations the safeguards appropriate to inquiries into individual blame-worthiness would be to divert and frustrate its purpose \* \* \* "

The sole purpose of the State Labor-Management Commission of Inquiry is to make a finding of criminal law violations and an official judgment on individuals guilty of them. These judgments have but one function and that is to condemn and stigmatize individuals. Furthermore, these judgments are preliminaries to and a part of the process of criminal prosecution. In such a situation all of the constitutional safeguards appropriate to criminal prosecution must be accorded these individuals. Justice Frankfurter so stated in his concurring opinion in HANNAH:

"In appraising the constitutionally permissive investigative procedures claimed to subject individuals to incrimination or defamation without adequate opportunity for defense, a relevant distinction exists between those proceedings which are preliminaries to official judgments on individuals and those, like the investigation of this Commission, charged with responsibility to gather information as a solid foundation for legislative action. Judgments by the Commission condemning or stigmatizing individuals are not called for.

When official pronouncements on individuals purport to rest on evidence and investigation, it is right to demand that those so accused be given a full opportunity for their defense in such investigation, excepting, of course, grand jury investigations."

The United District Court adopted the opinion of the Louisiana State Supreme Court rendered in *Martone v. Morgan*, 207 S.2d 770, as its own in connection with the constitutional question raised concerning the state law involved. In the course of its opinion the Louisiana Supreme Court pointed to the disclaimer in the state statute that the state agency had no authority to make binding adjudication and urged this as a magic formula of immunity against the practical effects of the incriminatory and defamatory judgments against individuals, which the state agency is duty bound to make. This is an erroneous postulate.

It is immaterial for the purpose of the resultant irreparable injury to the individual, that the "findings" of the Commission do not rise to the dignity of legalistic or binding "adjudication." The fact of the "findings" is the same. These "findings" declare a status. They are official pronouncements on individuals. They condemn; they stigmatize; they maim; and they cripple. The resultant injury is real, immediate and incalculable. As Justice Frankfurter said in his concurring opinion in *Joint Anti-Fascist Refugee Committee v. McGrath* (1951), 341 U.S. 123, 71 S.Ct. 624, in connection with an identical argument: (71 S.Ct. at p. 650).

"Nor does he obtain immunity on the ground that

designation is not an 'adjudication' or a 'regulation' in the conventional use of those terms. Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of procedural fairness. Due process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in assuring fundamental justice, it is also a living principle not confined to past instances."

The rights on individuals appearing before the Commission have been curtailed for want of procedural fairness and whether the form of the juggernaut which tramples these rights is that of "adjudication," "regulation" or "findings" the proscription of due process applies. In such a context the State statute's repugnance to elementary constitutional strictures is transcendent. *Greene v. McElroy* (1959), 360 U.S. 474, 79 S.Ct. 1400; *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*.

In HANNAH the court expressly held that the commission in question did "not hold trials or determine anyone's civil or criminal liability." The Commission under the State law however does in fact hold trials. Moreover, it holds public trials. The Commission furthermore determines the criminal liability of persons appearing before it and otherwise. In HANNAH the court held that the commission did not "indict." But the Commission under the State law has the authority to effect the equivalent of an indictment. It is expressly authorized, through its Chairman, to file criminal charges against individuals. Thus, it accuses, which is

what an indictment does. In HANNAH the court held that the commission "does not make determinations depriving anyone of his life, liberty or property." The Louisiana Commission however does make such determinations. Its determination that an individual is guilty of crime denies one of his legal right to be free from defamation, a property right recognized by the Court in *Joint Anti-Fascist Refugee Committee v. McGrath, supra*. And as the court held in HANNAH,

"Thus, when governmental agencies adjudicate or make binding determinations which directly affect legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process."

A contextual evaluation of the statute in question leaves no room for doubt that the consequence of being adjudged or found guilty of criminal law violations, of being deprived of the right to be free from defamation, is neither conjectural nor incidental to the hearings of the Commission. Such consequences are the sole objectives of the hearings. The public pronouncement of such adjudication or findings is the sole reason for which the Commission exists; it is the sole purpose for which it functions. The Commission of Inquiry of Louisiana has no other legitimate purpose than to make such adjudication. And in the constitutional context of due process, such findings are just as binding and just as much an adjudication as was the Attorney General's "designation" of subversion, found by the Court to be constitutional adjudication in *Joint Anti-Fascist Refugee Committee v. McGrath, supra*; just as much an adjudica-

tion as was the fixing of minimum rates by the Secretary of Agriculture in *Morgan v. United States*, 304 U.S. 1, 58 S.Ct. 773; and just as much of an adjudication as was the Security Clearance findings in *Greene v. McElroy, supra*.

Thus, the State statute in question, for the multiple reasons heretofore mentioned, obviously is constitutionally null and void.

**THE ACTS AND DEEDS OF STATE OFFICIALS  
DEPRIVE APPELLANT OF HIS  
CONSTITUTIONAL LIBERTIES**

An approach to a discussion of defendants' motion to dismiss must be made with the acknowledgment that such a motion admits all of the allegations of fact in the complaint. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S.Ct. 624; *Robichaud v. Ronan*, 351 F.2d 533. Furthermore, as stated by the court in *Lewis v. Brautigam*, 227 F.2d 124, 127:

"A complaint should not be dismissed on motion, unless, upon any theory it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts that could be proved in support of his claim."

The broad reach of the federal statute under consideration was defined almost thirty years ago in *Hague v. CIO* (1939), 307 U.S. 496, 59 S.Ct. 954, to include all of the rights embraced by the Fourteenth Amendment in these words:

"It (1983) thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. \* \* \*

Furthermore, as stated by the court in *Ex Parte, Virginia*, 100 U.S. 339, 347:

"Whoever, by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates these constitutional inhibitions \* \* \*."

Salient aspects of appellant's original and supplemental petitions establish that defendants, in their official capacities as state officials, conspired together and acted in concert with others willfully and purposefully to deny and have denied to and deprived appellant and those similarly situated of their rights, privileges and immunities secured to them by the United States Constitution, including by way of illustration the right to (a) the equal benefits and protections of state laws, (b) the privilege not to be falsely accused of crime, (c) impartial justice, (d) the right not to be wrongfully prosecuted on the basis of false charges of criminal law violations, (e) the right to privacy, (f) the right to live in peace and dignity, free of false and malicious accusations, (g) the right to a good reputation and not unjustly and wrongly to be defamed and degraded, (h) the right not to have a pall of shame and public obloquy engulf him, his parents, his relatives and friends, and (i) the right

to earn a living and belong to a labor union without impairment to job opportunities. Such state actions give rise to substantial federal questions. *Cooper, et al., v. Aaron, et al.* (1958), 358 U.S. 1, 78 S.Ct. 1401; *State of Missouri, ex rel., Gaines v. Canada, et al.* (1938), 305 U.S. 337, 59 S.Ct. 232; *Monroe v. Pape*, 81 S.Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177; *Hague v. CIO*, 307 U.S. 496, 59 S.Ct. 954; *Birnbaum v. Trussell*, 371 F.2d 672; *Basista v. Weir*, 340 F.2d 74; *Nesmith v. Alford*, 318 F.2d 110; *Cohen v. Norris*, 300 F.2d 24; *Hughes v. Noble*, 395 F.2d 495; *Brazier v. Cherry*, 293 F.2d 400; *Coleman v. Johnson*, 247 F.2d 273; *United States, ex rel., Potts v. Rabb*, 141 F.2d 45; *Valle v. Stingel*, 176 F.2d 697; *Cancino v. Sanchez*, 379 F.2d 808; *Jenks v. Henys*, 378 F.2d 335; *Brown v. Brown*, 368 F.2d 992; *Morgan v. Labiak*, 368 F.2d 338; *DeWitt v. Pail*, 366 F.2d 682; *Smith v. Hampton Training School for Nurses*, 360 F.2d 577; *Rivers v. Royster*, 360 F.2d 592; *Birnbaum v. Trussell*, 371 F.2d 692; *Hoffman v. Halden*, 268 F.2d 280; *Lewis v. Brautigam*, 227 F.2d 124, 55 A.L.R.2d 505 (5 Cir. 1955); *Scolnick v. Winston*, 219 F.Supp. 836, 842 (S.D. N.Y. 1963); *Egan v. City of Aurora*, 291 F.2d 706, 708 (7 Cir. 1961); *Jennings v. Nester*, 217 F.2d 153, 154 (7 Cir. 1954).

Furthermore, the right to belong to a labor union is one secured to appellant by the First and Fourteenth Amendments to the United States Constitution and thus cannot be taken without complying with the rigorous demands of the due process and equal protection clause of the Fourteenth Amendment: *Beauharnais v. People of the State of Illinois*

(1952), 343 U.S. 250, 72 S.Ct. 725, rehearing denied, 72 S.Ct. 1070, 343 U.S. 988; *N.A.A.C.P. v. Button, et al.* (1963), 371 U.S. 415, 83 S.Ct. 328.

It is respectfully submitted that the United States District Court committed reversible error in granting defendants' motion to dismiss.

Respectfully submitted,

J. MINOS SIMON

1408 Pinhook Road

Post Office Box 52116, OCS

Lafayette, Louisiana

Attorney for Appellant

***PROOF OF SERVICE***

I, J. Minos Simon, attorney for appellant herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the \_\_\_\_\_ day of September, 1968, I served a copy of the foregoing statement as to jurisdiction on the several parties hereto by mailing said copies in a duly addressed envelope with first-class postage prepaid to their attorneys of record, Mr. Jack P. F. Gremillion, Attorney General of Louisiana, Baton Rouge, Louisiana; Mr. Ashton L. Stewart, Special Assistant Attorney General, 604 Union Federal Building, Baton Rouge, Louisiana; and Mr. Victor A. Sachse, Special Assistant Attorney General, 701 Fidelity National Bank Building, Baton Rouge, Louisiana.

Lafayette, Louisiana, this \_\_\_\_\_ day of September, 1968.

---

J. MINOS SIMON





**APPENDIX A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION**

**CIVIL ACTION  
NUMBER 68-38**

**RODERICK JENKINS**

**VERSUS**

**JOHN JULIEN McKEITHEN, CECIL MORGAN,  
PAUL M. HEBERT, FLOYD C. BOSWELL,  
RALPH F. HOWE, A. R. JOHNSON, III, and  
BURT S. TURNER**

**CIVIL ACTION  
NUMBER 68-42**

**JERRY SYLVESTER**

**VERSUS**

**CECIL MORGAN, THOMAS W. McFERRIN, and  
WILLIAM V. REDMANN**

**J. Minos Simon, Esq.  
Post Office Box 52116, OCS  
Lafayette, Louisiana  
*Attorney for Plaintiff,  
Roderick Jenkins***

**Dennis R. Whalen, Esq.  
300 Louisiana Avenue  
Baton Rouge, Louisiana**

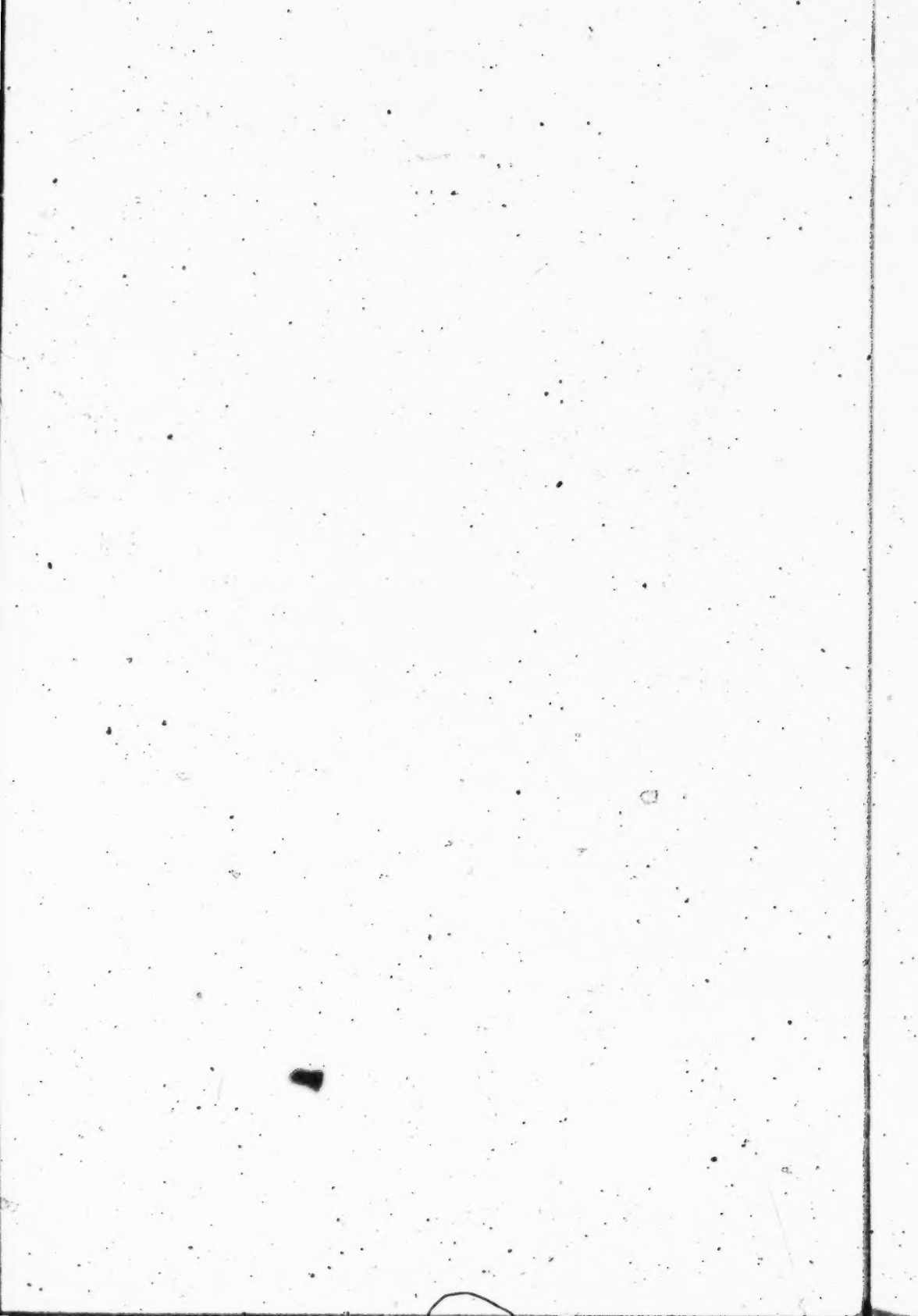
**William C. Bradley, Esq.  
Post Office Box 475  
Baker, Louisiana  
*Attorneys for Plaintiff,  
Jerry Sylvester***

**Jack P. F. Gremillion, Esq.  
Attorney General  
State of Louisiana  
State Capitol Building  
Baton Rouge, Louisiana**

**Ashton L. Stewart, Esq.  
604 Union Federal Building  
Baton Rouge, Louisiana**

**Victor A. Sachse, Esq.  
Fidelity National Bank Building  
Baton Rouge, Louisiana**

***Attorneys for Defendants***



AINSWORTH, Circuit Judge, and WEST and MITCHELL,  
District Judges: PER CURIAM:

These two suits, consolidated for hearing on motion to dismiss, attack the constitutionality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. This Act, LSA-R.S. 23:880.1-880.18, provides for the creation and operation of what is known as the Labor-Management Commission of Inquiry. Since injunctive relief is sought in both cases based upon the alleged unconstitutionality of said Act, this three-judge district court was convened pursuant to Title 28 U.S.C.A. 2281 and 2284. A hearing on the motions to dismiss was held on June 6, 1968, and after careful study of the voluminous records and exhaustive briefs of counsel, it is the opinion of this Court that the motions to dismiss must be granted.

The constitutionality of this Act has been challenged previously in the state courts of Louisiana in the case of *Martone v. Morgan*, 207 So.2d 770, wherein the plaintiff was represented by the same attorney now representing the plaintiff Jenkins. At the district court level, Mr. Martone prevailed, but that decision was reversed in a well-written opinion by Mr. Justice E. Howard McCaleb of the Louisiana Supreme Court. We agree with the unanimous opinion of the Louisiana Supreme Court in *Martone* that the case of *Hannah v. Larche*, 363 U.S. 420, 80 S.Ct. 1502, 46 L.Ed.2d 1307, is dispositive of the issues pertaining to the constitutionality of the Act here in question. The Act was properly analyzed by the Louisiana Supreme Court in *Martone* when it said:

"The Legislature of 1967, by Act 2 of the Extraordinary Session thereof (R.S. 23:880.1-880.18), created a commission denominated as the 'Labor-Management Commission of Inquiry' to investigate and find facts relating to violations or possible violations of the criminal laws of this State or of the United States arising out of or in connection with matters in the field of labor-management relations. According to the preamble to the act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State in the field of labor-management relations under which, by reason of suspected violations of the State and Federal criminal laws, there has been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons; that the present conditions vitally affect the public interest and threaten to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the presently existing conditions, the public interest requires that the causes thereof be investigated on a statewide basis as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of this State and of the United States.

"In the body of the act, the Commission is created and invested with power to ascertain the facts surrounding and pertaining to any actual or possible violations of the criminal laws relating to, arising out of or connected with problems or disputes in the field of labor-management relations. This power was limited

however, the act declaring, '\*\*\* it shall be investigatory and fact-finding only \*\*\*,' and it was further provided that 'The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; \*\*\*' and 'No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law.' Additionally, the act provides that the Commission '\*\*\* shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law \*\*\*'. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature.'

"After the membership on the Commission had been duly appointed and the body began to function conformably with the authority vested in it, plaintiff instituted the present suit for an injunction as a taxpayer to have the statute declared unconstitutional on various grounds which will hereinafter be set forth and discussed. The principal attack levelled by the plaintiff is that the act denies him due process as guaranteed by Section 2 of Article I of the Louisiana Constitution and the Fourteenth Amendment to the Constitution of the United States, because the powers vested in the Commission are such that, in their investigations and hearings authorized under the act, plaintiff and/or persons similarly situated are denied assistance of counsel, the right of confrontation, the

right of cross-examination of witnesses and the right to compulsory process for their witnesses. The provisions of the act thus assailed have to do with the procedure rules set forth in the act for hearings by the Commission.

\* \* \* \* \*

“\* \* \* we direct our immediate attention to plaintiff's principal attack, and the holding of the trial judge, that R.S. 23:880.1-880.18 denies plaintiff and those similarly situated due process under the State and Federal Constitutions in that it is an agency \* \* \* which makes determinations in the nature of adjudications affecting legal rights. \* \* \* Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution.”

“This ruling, in our opinion, does not conform with the nature of the statute and the purpose for its enactment, for the Labor-Management Commission of Inquiry is not invested with any power to make adjudications affecting legal rights. On the contrary it is, as its provisions expressly set forth, an administrative commission (R.S. 23:880.1) created for the special purpose of investigating and finding facts in relation to violation of existing criminal laws \* \* \* affecting in a significant manner labor-management relations in one or more areas of the state \* \* \* in various construction projects which may, in the

opinion of the Governor, operate as a serious threat to the economic well-being of the affected area or the State as a whole (R.S. 23.880.5). By Section 880.6(A) it becomes the duty of the Commission, when called on by the Governor to investigate and hold hearings, to receive testimony and documentary evidence and make findings with respect to any actual or probable violations of criminal laws which relate to the problems or disputes in the field of labor-management relations.

"Under the provisions of Section 880.7(A), the Commission is required to publicize its findings with respect to the question whether or not there is probable cause to believe that there have been violations of any criminal law arising out of the subject matter of its investigation. But it '\*\*\* shall have no authority to and it shall make no binding adjudication with respect to such violation \*\*\*'; however, it may make such recommendations to the Governor for action as it deems appropriate, and copies of its report are to be furnished to the Governor, Lieutenant Governor, the Attorney General and the Legislature. Nevertheless, its findings, recommendations and conclusions may not be used as prima facie or presumptive evidence of guilt or innocence of any person in any court of law.

"It is seen from the foregoing that this administrative body has no right to adjudicate; it merely finds facts and recommends. Hence, it is difficult to perceive that these limited powers impinge upon any

constitutional guarantee to which those being investigated are entitled under the Bill of Rights."

The Act here in question was obviously carefully drafted with *Hannah* in mind. Its provisions are carefully tailored along the lines of the statute creating the Commission of Civil Rights, 71 Stat. 634, 42 U.S.C. 1975-1975(e), 42 U.S.C.A. 1975-1975(e), which was at issue in *Hannah*, and we conclude that the holding there is completely dispositive of the constitutional question here involved. In *Hannah*, the court concluded:

" 'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of an adjudication, as for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceed-

ing, are all considerations which must be taken into account. An analysis of these factors demonstrates why it is that the particular rights claimed by the respondents need not be conferred upon those appearing before purely investigative agencies, of which the Commission on Civil Rights is one.

"It is probably sufficient merely to indicate that the rights claimed by respondents are normally associated only with adjudicatory proceedings, and that since the Commission does not adjudicate it need not be bound by adjudicatory procedures. Yet, the respondents contend, and the court below implied, that such procedures are required since the Commission's proceedings might irreparably harm those being investigated by subjecting them to public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions. That any of these consequences will result is purely conjectural. There is nothing in the record to indicate that such will be the case or that past Commission hearings have had any harmful effects upon witnesses appearing before the Commission. However, even if such collateral consequences were to flow from the Commission's investigations, they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative functions." 80 S.Ct. at 1514.

The following quote from *Hannah* is especially applicable here:

"On the other hand, the investigative process could be completely disrupted if investigative hearings were transformed into trial-like proceedings, and if persons who might be indirectly affected by an investigation were given an absolute right to cross-examine every witness called to testify. Fact-finding agencies without any power to adjudicate would be diverted from their legitimate duties and would be plagued by the injection of collateral issues that would make the investigation interminable. Even a person not called as a witness could demand the right to appear at the hearing, cross-examine any witness whose testimony or sworn affidavit allegedly defamed or incriminated him, and call an unlimited number of witnesses of his own selection. This type of proceeding would make a shambles of the investigation and stifle the agency in its gathering of facts." 80 S.Ct. at 1515.

The plaintiffs in the instant cases have not been called as witnesses before the Commission, and to allow them, along with the many others whom they claim to represent, to cross-examine witnesses and present evidence to the Commission would certainly "make a shambles of the investigation and stifle the agency in its gathering of facts." We need but to look at the lengthy pleadings filed herein by plaintiffs to conclude that the court in *Hannah* was right when it said that if investigative hearings were transformed into trial-like proceedings the fact-finding agency would be "plagued by the injection of collateral issues that would make the investigation interminable." For example, the plaintiff Jenkins alleges, inter alia, that the Governor of the State of Louisiana, together with members of the Labor-

Management Commission, including the Dean of the Louisiana State University Law School, the Dean of the Tulane Law School, the president of a local bank, and others "have \* \* \* singled out for murder \* \* \* six members of Teamsters Local No. 5 of Baton Rouge, Louisiana." He further alleges that these same gentlemen are using their "great arsenal of power" to destroy the current power structure of the labor union aforesaid" (Teamsters Local No. 5 headed by one Edward Grady Partin) "and to install a new power structure oriented and subservient to the James R. Hoffa group or clique of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America." The plaintiff Jenkins then alleges that these same defendants have caused the arrest of the said Edward Grady Partin on a charge of aggravated assault and that their action "is but a response to the announcement of the candidacy of Honorable Robert F. Kennedy for the nomination for the presidency of the United States by the Democratic Party of the United States, in that the conspirators herein are hoping thereby to induce Edward Grady Partin to recant his testimony heretofore given against James R. Hoffa, to be used as a basis to obtain a new trial for and the consequent release from prison of James R. Hoffa prior to the democratic presidential nomination, so as thereby to thwart the nomination of the said Robert F. Kennedy, who, as Attorney General of the United States, ordered and managed the prosecution and conviction of the said James R. Hoffa."

These are but examples of the twenty-one pages of allegations contained in the complaint filed herein by Jenkins. These are the issues that plaintiffs would like to

inject into Commission hearings, and these are the issues plaintiffs would like to air out in open court before this tribunal. The entire history of these proceedings convinces this Court that plaintiffs are far more interested in obtaining a forum in which to publicize their extraordinary allegations than in obtaining an adjudication of issues pertaining to the constitutionality of the Act involved. We decline to allow them to do so here.

A careful reading of the Act shows that plaintiffs' analysis thereof, as set forth in rather strained and extreme terms in the complaints filed herein, is simply not an accurate analysis of the powers, duties, and functions of the Commission created thereby. We conclude instead, that as stated in *Hannah*:

"\* \* \* the purely investigative nature of the Commission proceedings, the burden that the claimed rights would place upon those proceedings, and the traditional procedure of investigating agencies in general, leads us to conclude that the Commission rules of procedure comport with the requirements of due process." 80 S.Ct. at 1519.

While ordinarily it is only the question of the constitutionality of the state statute involved and whether or not injunctive relief in connection therewith should be granted that is before the three-judge court; nevertheless, where other issues are also involved, it is, to large extent, discretionary with the court as to whether or not such other issues will be resolved by the three-judge court. The test is whether or not such issues as would ordinarily be heard by

a single-judge court are so interrelated to the three-judge questions as to present one continuous transaction or set of operative facts. *Turner v. Goolsby*, 255 F.Supp. 724. In the instant case, in addition to alleging the unconstitutionality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, plaintiff in the *Jenkins* case also alleges that the various actions of the Commission alleged in his complaint, including those hereinabove quoted, constituted a violation of his civil rights under Title 42 U.S.C.A. 1981, 1983, and 1988. These allegations are so intertwined with the question of the constitutionality of the Act itself that they are proper claims to be considered by this Court.

After having determined that the Act itself is constitutional, and that the procedures adopted by the Commission do not do violence to plaintiffs' constitutional rights, we now conclude that plaintiffs have not stated a claim for relief under Title 42 U.S.C.A., Section 1981, 1983, or 1988.

Reduced to essentials, the plaintiff, *Jenkins*, claims that he, who has not been called before the Labor-Management Commission of Inquiry, has nevertheless, as a result of hearings held by that Commission, been charged under four certain bills of information filed by the District Attorney of Iberville Parish, Louisiana, with criminal conspiracy to commit a battery with a dangerous weapon on four different people, all in violation of certain state statutes. He alleges that these charges are false and that he is not guilty. He alleges that he has not been tried as speedily as he would like, even though his own allegations certainly

indicate no real violation of his constitutional right to a speedy trial. He alleges that these charges against him resulted from improper actions on the part of the Labor-Management Commission of Inquiry, and that there is no justification whatsoever for them having been filed against him. In other words, he alleges that he is not guilty.

The plaintiff Sylvester merely claims that continued hearings by the Commission while charges are pending against him in Iberville Parish, Louisiana, will make it impossible for him to obtain an impartial jury for the trial of his case, and hence he seeks to have this Court enjoin all further hearings by the Commission so long as these charges against him are pending.

All of these allegations of both plaintiffs are merely potential defenses to the criminal charges pending against them and may be urged if and when they are brought to trial on those charges. This Court must assume that the courts of Louisiana before whom plaintiffs' cases are pending will perform their duty and will see that the plaintiffs are given a fair and impartial trial and that all of their constitutional and statutory rights are respected. Unless and until the contrary is shown, the allegations made herein by these plaintiffs are premature, and do not state a claim upon which this Court could or should grant relief. As stated by the United States Supreme Court in *Stefanelli v. Minard*, 342 U.S. 117, 96 L.Ed. 138, 72 S.Ct. 118, concerning intervention of the federal courts in cases of this kind:

"If we were to sanction this intervention, we would

expose every state criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, *in the creation of an unfair trial atmosphere*, in the misconduct of the trial court—all would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution.” (Emphasis supplied.)

Plaintiffs argue that the teaching of *Dombrowski v. Pfister*, 380 U.S. 479, 14 L.Ed.2d 22, 85 S.Ct. 1116, is controlling here. We disagree. None of the special circumstances noted in *Dombrowski* appear here. *Dombrowski* held that the statute there under attack operated on its face to abridge the plaintiff's First Amendment right of freedom of expression. The court there found that to force the plaintiff to wait and urge his defenses during his state court criminal trial would result in “a substantial loss or impairment of freedom of expression” in the meantime. Such is not the case here. *Dombrowski* is inapplicable.

In passing, it is noted that the plaintiffs attempt to bring these suits as “class actions,” claiming to represent themselves “and all others similarly situated.” Suffice it to say

that the requirements of Rule 23 of the Federal Rules of Civil Procedure are obviously lacking in these cases, and thus this Court must necessarily conclude that these suits involve only the claims of the individual plaintiffs named herein, and that plaintiffs' attempt to make these actions "class actions" must fail.

For these reasons, defendants' motions to dismiss each of these cases will be granted, and a decree will be entered accordingly.

Baton Rouge, Louisiana, June 26, 1968.

/s/ Robert A. Ainsworth, Jr.

Robert A. Ainsworth, Jr., Circuit Judge

/s/ E. Gordon West

E. Gordon West, District Judge

/s/ Lansing L. Mitchell, District Judge

Lansing L. Mitchell, District Judge



1956

1992

2

[illegible]

**APPENDIX B****ACT NO. 2****HOUSE BILL NO. 2**

**BY: MESSRS. MUNSON, LeBRETON, ORDONEAUX, GREMILLION AND MRS. WALKER AND MESSRS. DAWSON, McGEHEE, KEOGH, BERNHARD, HIMEL, TRICHE, GUIDRY, DWYER, BEESON, McMILLAN,\* S. M. MORGAN, CASEY, TARVER, ANGELLE, SINGLETON, DeWITT, GREGSON, BOESCH, HILLENSBECK, CULPEPPER, COOPER, WILLIAMS, SULLIVAN, FORTIER, BORDES, CEFALU, FULCO, A. D. BROWN, JOHNSTON, DELONY, ANZELMO, BLUE, CHAISSON, CHRISTIAN, ORAIS, DALEY, LeBLANC, EARLY, GIBBS, GILL, HESSLER, KELLER, LANCASTER, LANDRENEAU, LAURICELLA, LYONS, MARCEL, McLAIN, O'BRIEN, PATTEN, POLK, RICHARDSON, SCHIELE, SIMON, STROTHER, SYLVESTER, TALBOT, VESICH, WILBANKS, WOMACK, WOOD, BARRANGER, BAUER, BEL, COLLIER AND SENATORS BLAIR AND O'KEEFE**

**AN ACT**

To amend Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, to add thereto a new Part, to be designated as Part III-A thereof and containing R.S. 23:880.1 through R.S. 23:880.18, both inclusive, to create the Labor-Management Commission of Inquiry; to provide with respect to its composition, selection and other matters relating to the organization and functioning thereof; to fix the powers, duties and functions of said commission

---

\*As it appears in the enrolled bill.

in connection with the investigation and findings of facts relating to violations or possible violations of criminal laws of the state of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations, including the exercise of the subpoena power; the authority to take depositions; to authorize the commission to hold executive and public hearings; to provide with respect to the rights, privileges, duties and immunities of witnesses; to define certain misdemeanors and fix penalties therefor; to provide with respect to contempt committed before the commission or in connection with its process; to require cooperation with the commission by all public officials, boards, commissions, departments and agencies of the state and all political subdivisions thereof; to otherwise provide with respect to matters pertaining to the purposes for which said commission is created, and to appropriate the sum of Two Hundred and Fifty Thousand (\$250,000.00) Dollars, or so much thereof as may be necessary, out of the General Fund of the state of Louisiana for the fiscal year 1967-68 to the Labor-Management Commission of Inquiry, to be used by it for operations in connection with the purposes for which it is created.

WHEREAS, unprecedented conditions presently exist in the state under which there has been a shut-down of construction work involving industrial development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations; and

WHEREAS, in connection with the conditions above referred to there have been allegations and accusations of violations of the state and federal criminal laws which should be thoroughly investigated in the public interest; and

**WHEREAS**, in order to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States, it is imperative that additional investigative facilities on a state-wide basis be made available; and

**WHEREAS**, it is essential that immediate action be taken to empower the Governor in this existing situation and in any similar emergencies that may arise in the future promptly to initiate action by which the facts causing or contributing to such conditions may be investigated and other appropriate action taken when such investigation indicates probable violations of state or federal criminal laws. Now, therefore

Be it enacted by the Legislature of Louisiana:

Section 1. Part III-A of Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, comprising R.S. 23:880.1 through R.S. 23:880.18, both inclusive, is hereby enacted to read as follows:

### **PART III-A. LABOR-MANAGEMENT COMMISSION OF INQUIRY**

**§ 880.1. Labor-Management Commission of Inquiry; creation, vacancies, domicile**

The Labor-Management Commission of Inquiry is created as a permanent commission administratively, with the powers of inquiry hereinafter set forth only to be exercised on an ad hoc basis as hereinafter provided. The commission shall be composed of nine members who shall be appointed by the governor and who shall serve at the pleasure of the governor. Three of the members shall be appointed from among the representatives of organized labor in Louisiana, three from industry located within

Louisiana and three shall be Louisiana residents and representatives of the public generally. Any vacancy for any cause shall be filled by appointment by the governor in the same manner as above stated. Any temporary vacancy, including recusation of any member in any investigation, may be filled by the governor on an ad hoc basis.

The domicile of the commission shall be in the city of Baton Rouge, but meetings may be held at any place within the state.

#### § 880.2. Officers of commission; secretary

The governor shall designate the chairman and vice-chairman, who shall be members of the commission. The governor's executive counsel shall serve as secretary to the commission and shall be the official custodian of all records of the commission, and in proper cases shall authenticate and certify to the accuracy thereof. He shall perform such other functions as are assigned by the commission.

#### § 880.3. Compensation of members

The members of the commission shall receive no salary but each shall be paid a per diem of fifty dollars for each day of actual attendance at meetings of the commission and shall be paid at the rate of ten cents per mile for travel expenses incurred while on business for the commission.

#### § 880.4. Quorum; vote necessary for actions

A majority of the members of the commission shall constitute a quorum. The affirmative vote of five members of the commission shall be necessary for the commission to take any action.

#### § 880.5. Referral of matters to commission by governor

Whenever, in the opinion of the governor, there is serious and substantial indication or there are widespread allegations that there is or may be widespread or continuing violations of existing criminal laws of the United States or of the state of Louisiana affecting in a significant manner labor-management relations in one or more areas of the state and that, as a result thereof, there exists a serious threat to the economic well-being of the affected area or the state as a whole, he may refer the matter to the commission in writing for such action as it is herein-after authorized to take.

§ 880.6. Public hearings, jurisdiction of commission

A. Whenever the governor refers any matter to the commission, it shall, as expeditiously as practicable, investigate and hold hearings at which it shall receive testimony and documentary evidence, or either of them, and it shall ascertain the facts surrounding or pertaining to and shall make findings with respect to any actual or probable violations of the criminal laws of this state or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations. The power, authority or jurisdiction of the commission in the conduct of any investigation and also during the course of any executive session or public hearing held by it shall be investigatory and fact finding only and shall be limited to matters which have been referred to it by the governor and which are or may be violations of the criminal laws of the United States or of this state which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.

B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations

on any of the strictly civil aspects of any labor problem or dispute, but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matters which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lockout or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters; or (4) any alleged acts of violence or threats of violence or so-called "mass picketing," or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute," as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of

contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

C. Upon the request of the governor, the commission may assign all or part of its investigatory forces to the State Police to assist them in investigating any violations or probable violations of law and in apprehending all persons engaged in violation of law. During such assignment such investigators shall be under the supervision of the Director of the Department of Public Safety and have all the power and authority of other members of the State Police.

D. All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the state and of the political subdivisions of the state shall cooperate fully with the commission, to the end that it may effectively and comprehensively carry out its functions and duties.

§ 880.7. Findings; recommendations to governor; criminal charges; interim reports

A. Upon the completion of its investigations and after public hearing the commission shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law or laws of the United States or of the state of Louisiana arising out of or in connection with or as a result of the matter which is the subject of the investigation. The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; however, it may, in its discretion, include in its findings the conclusions of the commission as to specific individuals or as to the general situation, or as to both, and it may make such recommen-

dations for action to the governor as it deems appropriate. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature. No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law.

B. If the commission finds that there is probable cause to believe that there has been a violation of any criminal law of the United States or of this state and that such violation arises out of or in connection with or as a result of a problem or dispute in the field of labor-management relations, it shall report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses. In addition, when directed to do so by the commission, the chairman shall file appropriate charges with the state and federal authorities having jurisdiction.

C. The commission shall make interim reports of its findings to the governor at such times as the commission or the governor may deem desirable.

D. With respect to any of its findings, the commission may request the governor to refer the matter to the attorney general asking that he exercise the full authority conferred by Article VII, Section 56 of the Constitution in causing criminal prosecutions to be initiated in accordance with law.

#### § 880.8. Powers of commission

In order to carry out the functions vested in it the commission may:

- (1) Adopt, amend, publish and enforce such rules

and regulations, not inconsistent with the provisions of this Part, as it deems necessary to fully effectuate the purposes for which it is created.

(2) Employ and fix the duties and compensation of such attorneys, investigators, staff personnel and other persons and make such other expenditures as it finds necessary to accomplish the purposes of this Part; provided that all salaries and compensation fixed by the commission shall be approved by the governor.

(3) Administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of books, records, documents or other evidence deemed relevant or material to any executive session or public hearing held or deposition taken by the commission, but only at such executive session, public hearing or at the time of taking the deposition. The power herein granted to issue subpoenas and compel attendance of witnesses and the production of books, records, documents or other evidence shall be exercised in accordance with the provisions of Section 880.9 of this Part.

(4) Order testimony to be taken by deposition in cases where the commission determines that a witness is incapacitated, and by virtue thereof, unable to attend the hearing or to appear in person before the commission during the course of an executive session or a public hearing, or is outside the boundaries of the state of Louisiana. Such depositions may be taken before any person designated by the commission who is authorized to administer oaths. Unless otherwise ordered by the commission, such depositions shall be filed at the public hearing and be made part of the record. Testimony by deposition may be taken within or without the state. If taken within the state subpoena

may issue from the commission compelling attendance and production of records. If taken without the state, the commission may apply to the district court having jurisdiction over the area where the commission is holding an executive session or public hearing, or to the district court in and for the parish of East Baton Rouge, for an order directing the taking of the deposition, in the manner provided by law for the taking of foreign depositions in judicial proceedings.

Testimony taken by deposition shall be reduced to writing by the person taking the deposition, or under his direction, and shall be subscribed by the deponent.

(5) Do and perform any other things necessary to accomplish the purposes for which it is created.

§ 880.9. Service of subpoenas; returns; failure to comply; contempt of commission

A. Subpoenas issued under authority of Paragraph (3) of Section 880.8 of this Part shall be served by domiciliary or personal service and may be served by any sheriff, deputy sheriff or employee designated by the commission. Domiciliary service shall be made by leaving the subpoena at the dwelling house or usual abode of the witness, with a person of suitable age and discretion residing therein as a member of the domiciliary establishment of the witness, or at any place where the business of the witness is regularly conducted, with a person of suitable age and discretion there employed. Subpoenas for the production of documents shall be served in a similar manner. The person making the service of any subpoena shall make a return thereon, setting forth the date, place, type of service and sufficient other data to show service in compliance with this Section. The return shall be signed and promptly returned to the commission.

B. (1) In the event any person fails or refuses to

obey a subpoena issued in accordance with the provisions of this Part, the commission may present its petition to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business, setting forth the facts. The court then shall have the power to compel such person to appear before the commission and give testimony or produce evidence as ordered. Any failure to obey such an order of the court may be punished by the court issuing the same as a contempt thereof. In addition, if any person commits any act which is contemptuous of any authority vested in the commission or of any procedure taken by the commission in conformity with the powers vested in it by the provisions of this Part, the commission may present its petition, setting forth the facts, to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business. Upon a finding of guilt, such person shall be adjudged in contempt of the commission and shall be punished by the court as a contempt of court.

(2) Contempt of the commission shall include but shall not be limited to any of the following acts:

(a) Contumacious failure to comply with a subpoena to appear before the commission, proof of service of which appears of record;

(b) Contumacious violation of an order excluding or separating a witness;

(c) Refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a relevant question when ordered to do so by the commission, or refusal to answer any other question when granted the immunity conferred by Section 880.13 of this Part.

(d) Contumacious, insolvent or disorderly behavior toward the commission, any member thereof or its attorney during the course of any executive session or public hearing, which tends to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(e) Breach of the peace, boisterous conduct or violent disturbance tending to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(f) Use of insulting, abusive or discourteous language by an attorney or other person at any hearing or in a document filed with the commission.

C. The chairman or other presiding officer may punish breaches of order or of decorum by censure or by exclusion from the hearing, or by both.

#### § 880.10. Rights of witnesses; right to counsel

A. No person may be required to appear or to testify at any executive session or public hearing held by the commission or give a deposition unless a copy of this Part and a general statement of the subject of the investigation has been served upon him prior to the time when he is required to appear or to give a deposition.

Provided, however, that in the event a witness objects to a question or a series thereof or to the subpoena on the ground that he has not been given sufficient information as to the subject of the investigation, such objection shall be submitted to the commission, and in the event that the commission determines that the objection has merit, the commission shall inform the witness adequately as to the purpose of the investigation and shall afford the witness reasonable additional time within which to prepare for the hearing. If the commission determines by majority vote

that the objection is without merit, such ruling shall be final, and the witness shall be ordered to answer the questions of the commission or to comply with the subpoena. If the witness fails or refuses to comply with the order of the commission or fails or refuses to comply with the order of the commission after the lapse of such additional time as the commission may have granted him within which to comply after further advising him of the nature of the inquiry, the commission shall exercise its powers set forth in Section 880.9 of this Part.

B. A witness summoned to appear before the commission shall have the right to be accompanied by counsel, who may advise him of his rights, subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at an executive session or at a public hearing may question the witness he accompanies concerning relevant matters. In no event shall counsel for any witness have any right to examine or cross-examine any other witness but he may submit to the commission proposed questions to be asked of any other witness appearing before the commission, and the commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry.

#### **§ 880.11. Witness fees**

Witnesses summoned to appear before the commission shall be paid the same fees and mileage as are allowed by law for witnesses in criminal cases.

#### **§ 880.12. Evidence and testimony at executive and public sessions; protection of witnesses; penalties**

A. The commission shall base its findings and reports only upon evidence and testimony given at public hearings. Prior to and at any time during or subsequent to the conduct of a public hearing the commission may go into execu-

tive session. It shall go into executive session upon the request of any member of the commission who states that in his opinion evidence or testimony being given or to be given at a public hearing may tend to degrade, defame or incriminate any person. In such executive session it shall afford the person who might be degraded, defamed or incriminated an opportunity to appear and be heard in the executive session, with a reasonable number of additional witnesses in his behalf requested by him, before deciding to receive such evidence or testimony in public hearing. If the commission should decide that such evidence or testimony should be heard in a public hearing, the evidence must be offered and filed anew in the public hearing and the testimony of the witness must actually be given at the public hearing, both without reference to the fact that the commission previously had viewed the evidence in executive session or heard the same or other testimony of the witness in executive session.

Should the commission determine to receive such evidence or testimony in public hearing, the person who might be degraded, defamed or incriminated thereby shall be given an opportunity at the public hearing to appear as a voluntary witness, or to file a sworn statement in his own behalf and submit brief, pertinent, sworn statements of others, or to submit to the commission a list of such persons as he may wish to have subpoenaed as additional witnesses. The actual issuance of any additional subpoenas shall be in the discretion of the commission.

B. It shall be a misdemeanor for any member of the commission, its counsel or employees, to make public any evidence or testimony taken at a private investigation or at any executive session. Whoever violates this Subsection shall be fined not more than one thousand dollars or be imprisoned for not more than one year, or both.

C. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right either to appear personally before the commission and testify in his own behalf as to matters relevant to the testimony or other evidence complained of or, in the alternative at the option of the commission, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

#### § 880.13. Immunity of witnesses

Whenever in the judgment of the commission the testimony of any witness, or deposition thereof, or the production of books, papers or other evidence by any witness, in any matter pending before it, is necessary to the public interest and the proper discharge by the commission of its duties imposed by this Part, the commission may make application to the district court having jurisdiction over the place where the hearing is being held, or to the district court in and for the parish of East Baton Rouge, requesting that the witness be instructed to testify, depose or produce evidence subject to the provisions of this Part, and upon order of the court such witness shall not be excused from testifying or deposing, or from producing books, papers or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no such witness so ordered by the court shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-

incrimination, to testify, depose or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court except for a prosecution for perjury or contempt committed while giving testimony, or while deposing or producing evidence under compulsion as provided herein.

#### § 880.14. Misdemeanors and penalties

Whoever:

(1) Uses or attempts to use violence, force or threats, with the intent to influence the testimony or conduct of any witness or person about to be called as a witness at any hearing before the commission, whether in executive session or a public hearing, or in connection with any investigation ordered by the commission; or

(2) Uses or attempts to use violence, force or threats to the person, his family, or property of any witness on account of his having attended any session or hearing or investigation, or on account of his testifying or having testified with respect to any pending matter; or

(3) With intent to avoid, evade, prevent or obstruct compliance, wholly or partially, with any subpoena issued by the commission, removes from any place, conceals, destroys, mutilates, alters or by any means falsifies any documentary material subject to such subpoena; or

(4) By force or threats, or by wilful acts prevents, obstructs, impedes or interferes with, or attempts to prevent, obstruct, impede or interfere with the due exercise of rights or the performance by the commission of its duties as imposed by this Part shall be guilty of a misdemeanor and upon conviction shall be fined not more than two thousand dollars or be imprisoned for not more than two years, or both.

**§ 880.15. Records of hearings**

A. A complete and accurate record shall be kept of each public hearing, and any witness shall be entitled to a copy of his testimony at such hearing, at his own expense.

B. The records of any public hearing held by the commission, when properly authenticated and attested by the secretary of the commission, are public records and shall be subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, as amended.

**§ 880.16. Immunity of commission members and employees**

No action, proceeding or decision of the commission, or any of its members or employees in the exercise of its duties, functions and obligations in conformity with the provisions of this Part, shall subject any member or employee thereof to any suit or liability for damages in connection therewith.

**§ 880.17. Budget unit of state; reversion of funds**

The commission shall be a separate budget unit of this state, as defined by law, and as such shall be subject to the provisions of Title 39 of the Louisiana Revised Statutes of 1950, as amended, and all other laws relating or applicable to budget units. Any funds appropriated to the commission which remain unexpended and unencumbered at the close of any fiscal year shall be remitted to the state general fund in accordance with law.

**§ 880.18. Liberal construction; exclusion from Administrative Procedure Act**

The provisions of this Part shall be liberally construed to effectuate the purpose for which it was enacted. The provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950, as amended, shall not apply to the Labor-Management Commission of Inquiry.

Section 2. The sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of the General Fund of the state of Louisiana for the fiscal year 1967-1968 to the Labor-Management Commission of Inquiry, to be used by said Commission for operations in connection with the purposes for which it is created.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not effect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

Section 5. The necessity for the immediate passage of this Act having been certified by the governor to the legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the governor.

/s/ VAIL M. DELONY  
SPEAKER OF THE HOUSE OF  
REPRESENTATIVES

/s/ C. T. AYCOCK  
LIEUTENANT GOVERNOR AND  
PRESIDENT OF THE SENATE

/s/ JOHN J. McKEITHEN  
GOVERNOR OF THE  
STATE OF LOUISIANA

APPROVED: July 22, 1967, at 10:52 A.M.

